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DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818; C-475-819]

Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is self-initiating a changed circumstances review of the antidumping (AD) and countervailing (CVD) orders on certain pasta from Italy¹ (1) in furtherance of the purpose of the International Trade Data System (ITDS) initiative and U.S. Customs and Border Protection's (CBP) efforts to modernize the electronic submission of import documents using the Automated Commercial Environment (ACE), and (2) to align across the *AD/CVD Italy Pasta Orders* the scope language regarding certifications accompanying imports of organic pasta. Specifically, in conjunction with this initiation, the Department preliminarily determines to convert the certification submission requirement to a record-keeping requirement, to authorize electronic submission of the certification, to update the scope language relating to the organic pasta exclusion, and to align the certification language across the *AD/CVD Italy Pasta Orders*. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

¹ See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996); and *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 38544 (July 24, 1996) (collectively, *AD/CVD Italy Pasta Orders*).

FOR FURTHER INFORMATION CONTACT: Jennifer Meek, Office I for AD/CVD Operations, at (202) 482-2778; George McMahon, Office III for AD/CVD Operations, at (202) 482-1167; or Sam Zengotitabengoa, Customs Liaison Unit for AD/CVD Operations, at (202) 482-4195, AD/CVD Operations, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The ITDS is an electronic trade data interchange system authorized pursuant to section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347. The purpose of ITDS, as defined by Section 405 of the SAFE Port Act of 2006, “is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by the United States Customs and Border Protection, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.” On October 13, 2015, CBP issued an interim final rule to amend its regulations to provide that, as of November 1, 2015, ACE is a CBP-authorized Electronic Data Interchange System which may be used for the filing of entries and entry summaries.²

Scope of the *AD/CVD Italy Pasta Orders*

On July 24, 1996, the Department published the notice of the *AD/CVD Italy*

² See *Automated Commercial Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry)*, 80 FR 61278 (October 13, 2015) (*Interim Final Rule*); and *Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings*, 81 FR 10264 (February 29, 2016) (General Notice).

Pasta Orders in the *Federal Register* with nearly identical language regarding the scope of the orders.³ In particular, the scope language covered:

Certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricoltura Biologica (AMAB) or by Bioagricoop srl.

On July 9, 1996, after the date of our final antidumping duty determination, Euro-USA Trading Co., Inc., of Pawcatuck, CT, submitted materials to the Department supporting its request for an exclusion for pasta certified to be “organic pasta.” Among the documents submitted are a decree from the Italian Ministry of Agriculture and Forestry authorizing Bioagricoop srl to certify foodstuffs as organic for the implementation of EEC Regulation 2029/91. Also submitted is a letter (with an accompanying translation into English) from the Director of Controls of Processing and Marketing Firms at Bioagricoop stating that the organization will take responsibility for its organic pasta certificates and will supply the necessary documentation to U.S. authorities. On this basis, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricoop srl are excluded from the scope of this order.⁴

The merchandise under order is currently classifiable under items 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

As noted in the language comprising the scope of the orders, our written description of the scope of the orders is dispositive. However, the notices published in connection with subsequent administrative reviews of the orders have contained minor differences in language regarding the identification of the authority that issues the organic certifications. Specifically,

³ See *AD/CVD Italy Pasta Orders*.

⁴ Note that a modified version of this paragraph has appeared in the scope description in all subsequent administrative reviews, which has no material impact on the scope’s coverage.

the most recent published final results in the CVD proceeding⁵ states, with regard to this exclusion and certification for organic pasta, “{a}lso excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l’Agricoltura Biologica, or by Ambientale.” By comparison, the most recent published final results in the AD proceeding⁶ states, “{a}lso excluded are imports of organic pasta from Italy that are certified by a European Union (EU) authorized body and accompanied by a National Organic Program import certificate for organic products.”

In connection with the organic exclusion language, both the 2010 and 2010-2011 administrative reviews of the CVD and AD orders on pasta from Italy cite the same October 10, 2012, memorandum (“Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy”). The Department has placed a copy of that memorandum on the records of these changed circumstances reviews. In that memorandum, at page 2, the Department stated, “...we intend to update the scope language to clarify that organic pasta from Italy is excluded from the scope when accompanied by the appropriate NOP certificate issued by any EU control body or control authorities identified by the USDA as part of the U.S.-EU Partnership on Organic Trade...” The Department stated that the scope language for both orders would read: “Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body and accompanied by a National Organic Program import certificate for organic products.”

⁵ See *Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11172 (March 2, 2015), and accompanying Issues and Decision Memorandum at “Scope of the Order.”

⁶ *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 8604 (February 18, 2015), and accompanying Issues and Decision Memorandum at “Scope of the Order.”

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), the Department will conduct a changed circumstances review of an antidumping or countervailing duty order when it receives information which shows changed circumstances sufficient to warrant such a review. In this case, the Department has determined that the advent of ITDS constitutes sufficient circumstances to conduct a changed circumstances review of the *AD/CVD Italy Pasta Orders*. Further, the Department does not require any additional information to make a preliminary finding. For this reason, as permitted by 19 CFR 351.221(c)(3)(ii), the Department finds that expedited action is warranted and is conducting this review on an expedited basis by publishing preliminary results in conjunction with this notice of initiation.

Currently the scope of the *AD/CVD Italy Pasta Orders* requires that in order for a specific entry to be exempted from the AD and CVD orders based on the exclusion of organic pasta, the certifications must accompany the entry. Consistent with the ITDS initiative, which aims to streamline the information filed with the U.S. Government via ACE as part of the import and export process, the Department evaluated whether the organic certification submission requirement related to the *AD/CVD Italy Pasta Orders* may be simplified. Based on our evaluation, we have preliminarily determined that it is appropriate to convert the certification requirement from an Entry Summary submission requirement to a record-keeping requirement for the exporter and the importer, consistent with the Department of Agriculture's National Organic Program, and the ITDS' goal to streamline the import process.⁷

⁷ See the *Organic Foods Production Act of 1990* (7 USC, Chapter 94): §6519. "Recordkeeping, investigations, and enforcement. (a) Recordkeeping. (1) In general, Except as otherwise provided in this chapter, each person who sells, labels, or represents any agricultural product as having been produced or handled using organic methods shall

Under such a record-keeping requirement, both the exporter and the importer would be required to maintain a copy of the original certification in their respective records, as well as documentation supporting the certification, that would be subject to verification by the U.S. Government. Because this certification requirement would be a record-keeping requirement, the exporter and importer would be required to submit the certification in response to a request from CBP or the Department, in the form or manner required by the requesting agency. Additionally, the certification should be issued, signed and dated prior to the merchandise being exported from Italy. Entries for which an exporter or importer is unable to produce the required certification upon the request of CBP or the Department may be subject to antidumping or countervailing duties.

Additionally, the Department preliminarily proposes to update the exclusion language for organic pasta. Specifically, the Department proposes to remove the reference to the National Organic Program certificate because the documentation may change over time. Finally, the Department preliminarily determines to align the scope language of the *AD/CVD Italy Pasta Orders* to reflect the Department's intent that the same certification authority (or authorities) is acceptable for purposes of both orders and to reflect the change from an entry submission to a record-keeping requirement.

Based on the foregoing, we propose altering the organic pasta exclusion and certification language in the *AD/CVD Italy Pasta Orders* to read as follows:

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United State Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

make available to the Secretary or the applicable governing State official, on request by the Secretary or official, all records associated with the agricultural product.”

The Department's proposed language is not intended to change any requirements under, or aspects of, the National Organic Program. If these preliminary results are upheld in the final results, the Department will revise the scope of the *AD/CVD Italy Pasta Orders* to reflect the aforementioned scope language.

Public Comment

Interested parties may submit case briefs in response to these preliminary results by no later than 14 calendar days after the date of publication of this notice in the *Federal Register*.⁸ Rebuttals, limited to issues raised in the case briefs, may be filed by no later than five calendar days after the deadline for case briefs. Parties that submit written comments or rebuttals are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁹ Parties who wish to comment on the preliminary results must file briefs electronically using ACCESS.¹⁰ ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.¹¹

Any interested party may submit a request for a hearing to the Assistant Secretary of Enforcement and Compliance using ACCESS within 14 days of publication of this notice in the *Federal Register*. Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues

⁸ Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed. See 19 CFR 351.303(b). This applies to submission of rebuttal comments as well as any request for a hearing.

⁹ See 19 CFR 351.309(c)(2) & (d)(2).

¹⁰ See 19 CFR 351.303(b) and (f).

¹¹ See 19 CFR 351.303(b).

to be discussed.¹² Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.¹³

Final Results of the Review

In accordance with 19 CFR 351.216(e), the Department intends to issue the final results of this changed circumstances review not later than 270 days after the date on which the review is initiated, or within 45 days if all parties agree to our preliminary finding.

Notification to Parties

This initiation and preliminary results of review notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221(c)(3)(ii).

Dated: June 14, 2016.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

¹² See 19 CFR 351.303(b).

¹³ See 19 CFR 351.310(d).

Appendix:

Scope of the AD and CVD Orders on Certain Pasta from Italy¹

Imports covered by this Order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the Order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this Order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the Order. Note 1. Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the Order.² Note 2. Pursuant to the Department's May 12, 2011, changed circumstances review, effective January 1, 2009, gluten free pasta is also excluded from the scope of the Order.³ Note 3. Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the Order. Note 4.

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United State Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by

¹ This scope language will be used in the antidumping and countervailing duty orders on pasta from Italy.

² This sentence is applicable only to the AD Italy Pasta Order.

³ This sentence is applicable only to the CVD Italy Pasta Order.

exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the Order is dispositive.

Note 1: *See* Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

Note 2: *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

Note 3: *See Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634 (May 12, 2011).

Note 4: *See Certain Pasta From Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319, 58320 (September 29, 2014).

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